IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 4059 of 2005(B)

[C.C.NO.786/2001 OF J.F.C.M-II, CHERTHALA]

PETITIONER: COMPLAINANT

BABU JOSEPH, KAPPALUMAVUNKAL,
MUHAMMA P.O., CHERTHALA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS: STATE AND ACCUSED

---

1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. P.M.THANKAMONY, W/O.M.G.VIJAYAN, PARAKODE, VARANAM P.O., THANNEERMUKKOM, CHERTHALA, ALAPPUZHA. (PROPRIETOR, PARAKODE ENGINEERING AND MECHANICAL WORKS)

BY ADV. SRI.C.V.MANUVILSAN FOR R2
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4059 of 2005

Dated this the 6th day of December 2006

O R D E R

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. He is aggrieved by the order passed by the learned Magistrate, forwarding the cheque to the expert for comparison. According to the learned counsel for the petitioner, in the nature of the contentions that are raised in the matter, it is absolutely unnecessary to forward the cheque to the expert. Transparent purpose of the accused is to protract the proceedings and play for time. The signature in the cheque is not disputed. Handing over of the signed cheque is also not disputed. The only contention is that it was handed over as security and the other entries in the cheque were made long after the signature in the cheque was affixed.

2. The learned Magistrate has already forwarded the cheque to the expert, I am informed. I alertly take note of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. The question is not whether this court would have acceded to such a request to forward the cheque to the expert. The question is whether in the interests of justice, the order deserves to be interfered with.

3. In the facts and circumstances of this case, I am satisfied that there is no warrant for invocation of the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C. Of course, I find substance in the contention that the exercise of forwarding the cheque to the expert would entail loss of precious time. The cheque bears the date 2001, it cannot be forgotten. The petitioner will of course be entitled to request the learned Magistrate, if ultimately the proceedings go in his favour that interests must be awarded to him for the amount of loss suffered by him.

4. The learned Magistrate shall call upon the expert to submit his report, at the earliest. I do direct the expert also to give maximum priority to this case and ensure that the report is made available to the learned Magistrate at the earliest. The learned Magistrate shall communicate a copy of this order to the expert.

5. This Criminal Miscellaneous Case is in these circumstances dismissed subject to the above observations and directions.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006